

Sheet Metal Workers International Association, Local Union No. 19 and Delcard Associates, Inc. and Omni Mechanical, Inc. and Joseph Stong, Inc. Cases 4-CB-6783, 4-CB-6879, 4-CB-6944, and 4-CC-2005-1

February 23, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

On May 31, 1994, Administrative Law Judge Marvin Roth issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Parties Delcard Associates, Inc. and Joseph Stong, Inc. filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Sheet Metal Workers International Association, Local Union No. 19, Philadelphia, Pennsylvania, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We adopt the judge's finding that the Respondent was engaged in a joint venture with several other unions and thus was liable for the unlawful acts committed by the other unions. However, at least insofar as area standards picketing of Joseph Stong, Inc. is concerned, the record does not establish that the Respondent joined the group effort before June 4, 1993. Accordingly, we do not find that the Respondent is liable for the unlawful conduct of any other union prior to that date.

The Respondent contends that the judge's finding that its pickets unlawfully blocked ingress to jobsites is inconsistent with *Service Employees Local 50 (Evergreen Nursing Home)*, 198 NLRB 10 (1972), and *Machinists Lodge 1233 (General Dynamics)*, 284 NLRB 1101 (1987), and that those decisions cannot be reconciled with those cited by the judge. We disagree. The conduct found lawful in the cases cited by the Respondent was both less egregious and less extensive than the Respondent's conduct here. In addition, no exceptions were filed by either the General Counsel or the charging parties to the judge's dismissal of blocking allegations in *General Dynamics*; thus, that issue was not ruled on by the Board.

Richard P. Heller, Esq., for the General Counsel.

Dennis P. Walsh, Esq., of Philadelphia, Pennsylvania, for the Respondent.

Lawrence S. Coburn, Esq., of Philadelphia, Pennsylvania, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge. These consolidated cases were heard at Philadelphia, Pennsylvania, on September 20, 21, 22, and 23 and October 18 and 19, 1993. The charges were filed respectively on November 20, 1992, by Delcard Associates, Inc. (Delcard), on March 29, 1993, by Omni Mechanical, Inc. (Omni), and on June 15 and 23, 1993, by Joseph Stong, Inc. (Stong). The consolidated complaints, which issued respectively on January 29, April 29, and August 20, 1993, and were amended at the hearing, allege that Sheet Metal Workers International Association, Local Union No. 19 (the Union, Local 19, or Respondent), violated Section 8(b)(1)(A) and 8(b)(4)(i)(ii)(B) of the National Labor Relations Act (the Act). The gravamen of the complaint is that in connection with picketing at three locations, each involving different employers, the Union blocked ingress of employees to the jobsite, and in some instances engaged in threats and acts of violence, and at one site engaged in secondary boycott picketing. Respondent's answers deny the commission of the alleged unfair labor practices.

All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally, and to file briefs. General Counsel, the Charging Parties, and the Union each submitted a brief. Briefs were received by me on February 14, 1994.

On the entire record in this case¹ and from my observation of the demeanor of the witnesses, and having considered the arguments of counsel and the briefs of the parties, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF DELCARD, OMNI, AND STONG

Delcard, a Delaware corporation with an office and facility in Wilmington, Delaware, is engaged in the construction industry. Omni, a Pennsylvania corporation with an office and facility in Gilbertsville, Pennsylvania, is engaged in the sheet metal and HVAC (heating, ventilation, and air-conditioning) contracting industry. Stong, a Pennsylvania corporation with its principal place of business in Chester, Pennsylvania, is engaged in the installation and service of plumbing, HVAC, and fire protection systems. In the operation of their respective businesses, Delcard annually purchases and receives at its Wilmington, Delaware facility goods valued in excess of \$50,000 directly from points outside of Delaware. Omni and Stong each annually perform services valued in excess of \$50,000 for customers located outside of Pennsylvania, and Stong annually purchases and receives at its Chester, Pennsylvania facility goods valued in excess of \$50,000 directly from points outside of Pennsylvania. Delcard, Omni, and Stong are each employers and persons engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

¹ Certain errors in the transcript have been noted and corrected.

II. THE RESPONDENT UNION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Delcard Case*

Delcard is a nonunion contractor. About 1 year prior to the picketing in question, the Union unsuccessfully sought to organize the Company's employees.

Delcard obtained a subcontract to perform the mechanical work on a renovation project at the Stone & Webster building in Cherry Hill, New Jersey. Delcard commenced work about October 1992.² Delcard worked continuously at the project until March 1993, and thereafter on an intermittent basis. Delcard was still performing work intermittently at the project at the time of the present hearing. At the peak period, Delcard had some 45 to 50 employees on the project. In November, Delcard had about 10 employees at the jobsite, although the number of employees fluctuated.

It is undisputed and the parties so stipulated as follows: On November 9, Union Business Representative John Bush and Union Organizer Gerard Slavin set up an area standards picket line at the Stone and Webster jobsite. The picketing lasted 5 days a week, Monday through Friday, throughout the month of November, and continuing until mid-January 1993. Bush and Slavin were present on the first day of picketing. On all subsequent days of picketing, Bush or Slavin were present. On some days both were present.

It is also undisputed that the Union picketed the jobsite in furtherance of its area standards dispute with Delcard. The pickets, except Bush, wore signs stating "NOTICE—CONTRACTOR IS DESTROYING SHEET METAL INDUSTRY STANDARDS. WE PROTEST AGAINST DELCARD ASSOCIATES" (name inserted on duct tape) followed by the Union's name.

There were three entrances to the Stone and Webster jobsite, herein referred to respectively as gates A, B, and C. Initially the Union picketed at all three entrances. After the first 3 days of picketing (November 9, 10, and 11), gate B was set aside as a reserve gate for Delcard. Thereafter the Union confined its picketing to gate B. The number of pickets is in dispute.

The complaint alleges that the Union, by its agents and representatives, blocked ingress of employees to the jobsite on November 9, 10, 11, 18, and 19. The complaint further alleges that the Union: on November 10, threatened an employee with violence; on November 11, threatened an employee with violence, and struck the window of a vehicle carrying employees; on November 18, rocked a vehicle carrying employees, struck the vehicle windows, and bent the mirror on the vehicle; and on November 19, kicked and caused damage to the vehicle carrying employees and bent the antenna on the vehicle. The complaint alleges that by the foregoing conduct, the Union violated Section 8(b)(1)(A) of the Act.

General Counsel presented five witnesses, all employed by Delcard, who testified concerning the picketing and alleged unlawful conduct at the Stone & Webster jobsite: William

Phillips, Charles Campagne, Robert Torres, Vincent Ganc, and Daniel Hunt. Phillips was general foreman, overseeing all mechanical work on the project. Phillips reported to Company Superintendent Herman Smith. On the jobsite, the Company had area or "floor" foremen who reported to Phillips. Phillips testified that he could write up an employee but had no authority to hire, fire, or exercise further discipline. Rather, such matters were handled by Smith. General Counsel concedes that Phillips was a supervisor within the meaning of the Act.

In November, Campagne, Torres, and Hunt were floor foremen at the Stone & Webster jobsite. Campagne testified in sum as follows: He was in charge of the mechanical work on floor 3. Some three or four employees reported to him, although sometimes there was only himself and one helper. Campagne gave them their daily work assignments. If a problem arose with an employee, he would report it to Phillips. However Campagne did not encounter any such problems on the job. Campagne did not consider himself a supervisor. He spent at least 75 percent of his workday performing manual labor. To his knowledge, he received the same benefits as other employees. He had no authority to hire, fire, or discipline employees.

Robert Torres testified in sum as follows: He was in charge of demolition, with one employee to assist him. He directed and instructed the employee in performing that work. Torres initially reported to Superintendent Smith, and subsequently to Phillips. Torres was not involved in hiring or firing. If a disciplinary problem arose, he would inform Phillips. However there were no such problems on the job. After demolition work was completed (in late November), Torres performed sketching (modifying blueprints), working along with other employees. Torres previously worked as a foreman on other jobs but has also worked as a rank-and-file employee. In 1990, while serving as a foreman, he was eligible to vote in the Board-conducted representation election.

Daniel Hunt testified in sum as follows: He was foreman in charge of mechanical work on floor 4, which involved duct installation. He initially had one, and subsequently two employees assisting him. Hunt gave them their work assignments. He reported to General Foreman Phillips on work progress and problems.

Vincent Ganc, General Counsel's remaining witness in the Delcard case, was a sheet metal apprentice. It is undisputed that he had no authority to direct other employees. Ganc reported to Phillips, whom he described as his supervisor.

The Union cross-examined General Counsel's witnesses but did not present any witnesses or documentary evidence with respect to their duties or responsibilities. In its brief, the Union did not take any position with respect to their status. I find that Campagne, Torres, and Hunt, like Ganc, were at all times material herein employees within the meaning of the Act, and entitled to the protection of Section 7 and 8(b)(1)(A) of the Act. The authority exercised by the Company's floor foremen in directing their helpers' work, constituted the kind of authority commonly exercised by skilled workers over helpers and apprentices, and does not warrant their classification as supervisors within the meaning of Section 2(11) of the Act. See *Koons Ford of Annapolis*, 282 NLRB 506 fn. 17, 513-514 (1986), enf'd. 833 F.2d 310(T) (4th Cir. 1987).

² All dates herein for the Delcard case are in 1992 unless otherwise indicated.

With regard to the first day of picketing, November 9, Foreman Phillips testified in sum as follows: He drove to work with service technician Gary Hicks and apprentice Ganc. They arrived at about 6:45 a.m. There was a picket line of about six pickets across the gate A entrance (north side of King Avenue, parallel to stop sign) blocking the entrance. (In his investigatory affidavit, Phillips said there were six to eight pickets.) Phillips proceeded up to the stop sign at the south side of King Avenue. The pickets were yelling and cursing, telling the vehicle occupants to get out and go back to Delaware, that "you're on our turf now." (Phillips testified at one point that Union Business Representative Bush made the remarks, and at another point that Bush made most of the remarks. In his affidavit, Phillips indicated that the pickets, including Bush, yelled the obscenities and other remarks.) Phillips did not try to talk to the pickets and they did not attempt to converse with him. Phillips waited about 30 seconds and then proceeded to a pay phone on Route 70, where he called his superintendent. The superintendent called the local police. About 20 minutes later the police escorted the Phillips vehicle into the jobsite.

Robert Torres testified in sum as follows: He drove alone to the jobsite on November 9, arriving at about 6:30 a.m., ahead of the other employees. Bush and about four pickets blocked the gate A entrance. Torres approached the picket line and stopped. Bush came over to him and asked if he was a glazier. Torres answered no. Bush then asked for whom he worked. Torres answered that he worked for Delcard, and wanted to get in. Bush, using profanity, told Torres to get out and go back to Delaware. The other pickets yelled at Torres. Torres waited about 3 minutes, then he backed out and proceeded to a fast food restaurant, where he waited with other employees until they were escorted by security into the jobsite. Torres testified that they got into the site between 9 and 9:30 a.m. However in his affidavit, Torres stated that he got into work about 8 a.m.

With regard to November 10, Phillips testified in sum as follows: He again drove to work with Hicks and Ganc, arriving about 6:45 a.m. This time they approached gate B, off Cuthbert Boulevard. About six pickets were stationed on the right half of the entrance. Some cars got through the left side. However as Phillips approached, Bush told the pickets to spread out and cover the entrance, which they did. Phillips stopped his vehicle. The pickets surrounded his vehicle (two on each side and two in front), yelling the kind of remarks they made the previous day. (In his affidavit, Phillips stated that 8 to 10 pickets rushed up to his vehicle.) Phillips backed up his vehicle, and again tried to enter the jobsite. The pickets again reformed their line, and then surrounded Phillips' vehicle. Phillips again backed away. This time he headed for gate A. At gate A, about six pickets stood in the left lane. They permitted Stone & Webster employees to enter through the right lane. As Phillips approached gate A, the pickets shifted across the entrance, blocking his way. Phillips entered the jobsite by swerving over the curb and onto the adjacent grassy area, around the picket line.

Vincent Ganc, in his testimony, substantially corroborated Phillips' testimony regarding the events of November 10, although on cross-examination he evidently confused gates A and B. Ganc specifically corroborated Phillips' testimony that Bush ordered the pickets to block their vehicle so that they could not get through.

Charles Campagne testified in sum as follows: On November 10 he arrived at the jobsite at about 6:45 a.m. and sought to enter through gate B. Robert Torres got in, followed by another vehicle. Then about four pickets formed a line across the entrance, blocking Campagne's vehicle. There was no conversation. Campagne backed up and drove slowly to gate A. Again, about four pickets formed a line across the entrance, blocking his way. Campagne returned to gate B, but the pickets again formed a line and blocked his way. He parked in a nearby lot and waited. About 15 seconds later a black vehicle pulled alongside, and Business Representative Bush got out. Bush, cursing at Campagne, told him to get back to Delaware, and if he tried to get through, Bush would kill him. Bush did not at this time accuse Campagne of speeding. Campagne walked to the Stone & Webster building. He called security (a local police officer) who escorted his vehicle into the jobsite at about 7:15 a.m. Campagne told Phillips and other employees what happened. Campagne told the police officer that Bush threatened his life. When the officer informed Bush of the accusation, Bush falsely told the officer that Campagne approached the gate at 40 miles per hour and tried to run over the pickets.

On November 11, by prearrangement, Delcard personnel organized themselves into a caravan, so as to proceed in a line into the jobsite. This was Daniel Hunt's first day on the job. Hunt drove to work in his van, accompanied by Phillips, Hicks, and Ganc. Phillips had a camera. Torres, driving alone in his pickup truck, was behind the Hunt vehicle and a pickup truck driven by Delcard employee Wayne Geiger. They approached gate A from Route 70.

Hunt testified in sum as follows: There were at least four pickets at gate A. Hunt was proceeding at 5 to 10 miles per hour. Bush told the pickets to get in front of Hunt's van. Bush came over to Hunt, said he'd "kick Hunt's ass," and using more profanity, told him to go home. Bush then went to the passenger side of the van and hit the window with his elbow. After stopping for about a minute, Hunt inched his vehicle through the picket line. Hunt then saw the pickets surround Torres' vehicle. Hunt did not speak to Bush or the other pickets.

Robert Torres testified in sum as follows: After the Hunt and Geiger vehicles passed through the picket line, the pickets blocked his vehicle. Torres blew his horn but the pickets would not move. Bush came over to Torres and, using his usual profanity, told Torres to get out. Bush struck the car window with his elbow. Torres backed out and proceeded to gate B. About three pickets blocked his way. Torres backed away, parked briefly, and then entered the jobsite through gate B. Torres told other employees about the incidents on November 9 and 11.

Phillips and Ganc, in their testimony, substantially corroborated the testimony of Hunt and Torres with respect to the picket line conduct at gate A. (Phillips was seated in the front passenger seat of Hunt's van and Ganc in the middle front.) Phillips testified that as Hunt approached gate A, about six pickets spread out across the entrance, and Bush yelled to the pickets at gate B to come over and help them. Phillips further testified that the pickets surrounded the van, yelling and pounding on the doors and windows, and as the vehicle passed through the line, bent the mirrors and antenna. However there was no damage to the vehicle. Phillips further testified that in addition to his usual remarks, Bush told Hunt

something to the effect that "I'm going to get you." Ganc testified that the pickets surrounded Hunt's vehicle. Both Phillips and Ganc testified that Bush struck the passenger side window with his forearm or elbow.

After the Hunt vehicle passed through the picket line, Phillips took a photograph of the Torres vehicle (white Ford pickup truck) and pickets. The photo shows one picket on the passenger side and at least two pickets in front of the vehicle. The photo also shows, behind the pickets standing in front of the vehicle, footwear which does not match that of either of the two pickets. Therefore it is evident that the photo reflects three pickets standing in front of the vehicle. Torres testified that there were also pickets on the driver side of his vehicle. As the photo does not show the driver side, his testimony is plausible.

As indicated, after November 11 the Union confined its picketing to gate B, now designated as a reserve gate for Delcard. The remaining allegations pertain to November 18 and 19.

On November 18, at about 6:45 a.m., Phillips, driving a van leased by Delcard, arrived at gate B. About seven employees, including Torres and Hunt, were passengers in the van. Phillips testified in sum as follows: As he approached the picket line, the pickets surrounded the van (two in front and two on each side). They yelled their usual remarks. They leaned on the van, scratched it, bent the mirrors and antenna, and rocked the vehicle from front to rear. Phillips waited 4 to 5 minutes and proceeded to ease forward. As the pickets moved aside, they continued to bang on the vehicle and bend the antenna. Phillips does not know whether the vehicle was damaged on this occasion. There were no other vehicles arriving at this time.

Torres testified in sum as follows: There were three or four pickets blocking the gate B entrance. (In his affidavit, Torres said there were five or more pickets.) They blocked the van, but the van was stopped for less than a minute. Torres felt the van rocking. Hunt testified in sum as follows: He was in the front passenger seat. Some four or five pickets got in front of the van, yelling at them to go home. Bush came around to the passenger side, pointed at Torres, and said, "I want you." Torres heard a loud bang behind him, indicating to him that someone punched a window. Torres did not recall the van rocking. The van was stopped less than a minute. In his affidavit, Torres stated that the van was stopped for about 5 minutes. However Torres testified that his estimate of less than a minute was based on his viewing of a videotape, although the tape was actually filmed the next day.

On November 19, Phillips arrived at the jobsite at 5:30 a.m. There were no pickets present at that time. Phillips had a video camera. He proceeded to the fifth floor of the Stone & Webster building, where he set up the camera facing gate B, about 100 yards away.

At about 6:45 a.m., the Delcard leased van, driven by Wayne Geiger, arrived at gate B. Robert Torres was the only occupant of the vehicle to testify concerning the picketing on November 19. Torres testified in sum as follows: Hunt and other employees were passengers in the van. Torres was seated on the left side of the middle of three rows. Bush and at least four pickets blocked the entrance. Geiger stopped the van. Pickets leaned on the van, and one got on the front. Torres heard a thump on the passenger side where Bush was

standing. The van was stopped for only a few seconds. After the van passed through the picket line, Torres observed that the sliding door was scratched and the antenna bent. The employees said nothing to the pickets on either November 18 or 19 and they did not make any gestures.

General Counsel presented in evidence Phillips' videotape of the encounter. The videotape shows that at least six pickets, including Bush, crowded around the van as it arrived at gate B. The videotape further shows that one of the pickets, who appears to be Bush, kicked the passenger side of the van as it passed through the picket line. Phillips testified, based on his observation of the scene and the videotape, that one picket lay down on the hood of the van and that Bush was the picket who kicked the van. Phillips further testified that he reported the November 19 incident to the police because of damage to the van. Specifically, there were scratch marks on both sides, a mark where Bush kicked it, and a bent antenna.

The Union presented Business Representative Bush and Organizer Slavin as its witnesses with respect to the Delcard case.

Bush and Slavin testified in sum as follows: They initially set up the picket line, using four pickets, wearing signs, at each of the three entrances to the Stone & Webster premises. In addition, Bush stationed himself at gate A and Slavin at gate B. The pickets did not move from one gate to another. Bush sometimes stopped by at gate B, but not when cars approached. However Slavin was sometimes at gates A or C when cars approached. Sometimes a picket brought coffee to pickets at other gates. This arrangement continued during the first 3 days of picketing (November 9, 10, and 11). In sum, there were a total of 14 pickets, including Bush and Slavin, during this period. After gate B was established as a reserve gate, the Union stationed only four pickets at that gate, plus Bush and Slavin (occasionally only one of them).

Bush testified that for the first 3 days, he did not know which arriving vehicles contained Delcard employees, although he looked for Delaware license plates. Bush testified that some Stone & Webster employees commuted from Delaware. However it is undisputed, as testified by Robert Torres, that construction employees, including Delcard employees, reported to work earlier than Stone & Webster employees. Slavin testified that by the third day of picketing he knew which vehicles carried Delcard employees.

Bush testified in sum as follows: He instructed the pickets to move in a rotating manner at the picketed entrances. "We tried to stop and slow down everyone to speak to them so that we could let them know who we were and why we were out there." Bush wanted to find out which employees were sheet metal workers, and to determine if they were making area wages. He also wanted to explain to non-Delcard employees and the public why they were there, i.e., "that we were protesting Delcard on a wages and standard[s] issue." However Bush gave no instructions to the pickets as to who if anyone should speak to occupants of vehicles or what if anything they should say. "The only instructions I gave the pickets that I had there was to be very careful, that there was a lot of traffic, and to keep moving in a rotating manner." Bush personally approached each vehicle, and after he explained the Union's protest, the pickets stepped out of the way. Some vehicles went through the picket line without stopping, in which case the pickets quickly got out of the

way. Bush never received the information which he sought from the Delcard employees. Organizer Slavin testified that the Union initially needed pickets at all gates "to get our message out," namely, as stated on the picket signs, that Delcard was destroying Sheet Metal Workers' area standards.

On the basis of Bush's own testimony, it is evident that the Union intentionally blocked access to the jobsite. Robert Torres testified that the roadway at gate A was 16 feet wide, and 8 to 10 feet wide at gate B. Bush testified that gate A was 20 to 25 feet wide, and Slavin testified that the driveway at gate B was about 25 feet wide. Photographs taken by William Phillips indicate that gate B, at its entrance, was narrower than gate A, although widening beyond the entrance. At neither entrance would it have been possible for a vehicle to safely proceed ahead, while four to six pickets were moving back and forth across either entrance. I find incredible Slavin's testimony that the van carrying Delcard employees proceeded through gate B at 10 miles per hour while six pickets (including himself and Bush) walked in a circle at the entrance. Moreover, Phillips' videotape plainly demonstrates that the pickets did not simply confine themselves to rotating across the entrances, but sought to surround approaching vehicles which carried Delcard personnel. To this extent, at least, the videotape corroborates the testimony of General Counsel's witnesses.

The testimony of Bush and Slavin also lacks credibility in another significant respect, namely, the Union's professed purpose in picketing. The Union already knew that Delcard paid wages and provided benefits which were inferior to those which the Union considered to be area standards. Bush and Slavin, in their testimony, did not indicate that the Union had any current interest, through the picketing or otherwise, in organizing Delcard's employees. Therefore it would make no sense for the pickets to repeatedly stop vehicles carrying Delcard personnel for the purpose of learning their job descriptions or wage rates. It would also make no sense to stop other vehicles for the purpose of giving the occupants the same message conveyed on the picket signs. Moreover, if the purpose of the picketing was to obtain information or plead the Union's cause, it would make no sense for Bush to fail to give the pickets any instructions as to whether they should speak or what they should say. And if only Bush and Slavin could ask questions or provide information, there would be no need to have four or more additional pickets at each entrance. Rather, the number of pickets, coupled with their behavior as shown on Phillips' videotape, tends to corroborate the testimony of General Counsel's witnesses, in sum, to the effect that the Union engaged in picketing in order to frustrate and intimidate Delcard's employees from entering the jobsite.

With respect (evidently) to the incident involving Charles Campagne, Bush testified in sum as follows: On November 9 or 10, a light-colored large van proceeded on King Avenue at 25 to 35 miles per hour eastward (from gate B) to gate A. The driver stopped at gate A for 5 to 10 seconds, and then drove back to gate B at 25 to 30 miles per hour. There he approached the picket line, slammed on his brakes, stopped for about 10 seconds, backed out, and proceeded to park in no. 2 executive campus lot, across King Avenue from the Stone & Webster facility. Bush, who was at gate A, knew that the driver was a Delcard employee. Bush drove over to him in his black Oldsmobile and asked if he was a

Delcard employee (Bush subsequently testified that he did not recall whether he asked him). Bush asked the employee if he were crazy, and trying to kill somebody, and admonished him for his unsafe driving. The employee just kept saying "Yes, sir." Bush did not threaten to kill him or anyone else. Bush then returned to the picket line. The employee walked to the Stone & Webster facility, later returned to his vehicle, and drove into the jobsite through gate B. Neither the police nor security spoke to Bush about the matter.

Bush further testified in sum as follows: He did not hear any picket say scab, or get back to Delaware, or use profanity, nor did he use such language. He never said "I want you," although he may have said "I want to talk to you." He never hit a car window with his elbow, although he may have tapped on a window to indicate that he wanted to talk. To his knowledge, no one struck or damaged a car mirror or antenna. However (referring to the Delcard leased van and videotape) "someone" kicked the van, because one of the passengers made an obscene gesture. (Bush did not claim that he expressed disapproval of the picket's conduct.) No one tried to rock or move the van. The van, with seven to nine passengers, was too heavy to be rocked. The driveway was icy, which may have accounted for pickets slipping. On another occasion (evidently referring to Phillips' testimony concerning November 10), a driver approached gate A, stopped briefly, proceeded to gate B, and then returned and went past gate A by driving over the curb and grass at 30 to 40 miles per hour.

With reference to the videotaped incident, Organizer Slavin testified that he was on the driver side, about 3 feet from the van, but did not see anyone touch the van. The testimony of Bush and Slavin confirms that Bush was on the passenger side of the van. As indicated, I have found that Bush kicked the van. If Bush or any other picket was disposed to engage in such conduct on the one occasion when they happened to be videotaped in the act, then it is probable, as testified by General Counsel's witnesses, that the pickets engaged in other such acts. Indeed, by intentionally kicking the van, Bush in effect signaled the pickets that they were free to engage in similar conduct.

As indicated, I have reservations as to the credibility of Bush and Slavin regarding significant aspects of this case. In contrast, the few discrepancies in the testimony of General Counsel's witnesses were relatively insignificant. Given the large number of pickets on the first 3 days of picketing, and evidence indicating that pickets, including Bush, moved from one gate to another, it is not surprising that a witness might be confused as to the number of pickets at a gate at any given time. General Counsel's witnesses generally impressed me as credible.

For the reasons discussed above, I find that the testimony of General Counsel's witnesses, in sum, substantially indicates what occurred in connection with the picketing. I specifically find that on November 9, 10, 11, 18, and 19, the Union by its pickets, including Bush and Slavin, intentionally blocked and impeded ingress of employees to the Stone & Webster jobsite. I further find that on November 10, Bush threatened to kill employee Campagne if he tried to go through the picket line; on November 11, threatened to kick employee "Hunt's ass" when he tried to get through the picket line; and on November 18, pointed at employee Torres and told him "I want you." In the context in which Bush

made this last remark, the remark constituted an implied threat of violence. I further find that on November 11, the Union by its pickets struck the vehicles of Hunt and Torres, bending the mirrors and antenna on Hunt's vehicle; on November 18, struck, leaned on, and rocked the Delcard leased van, scratching it and bending the mirrors and antenna; and on November 19, again struck and leaned on the van, scratching it and bending the antenna. I further find that the Union, by its pickets, engaged in such acts and conducts with the participation, direction and approval of Business Representative Bush, for the purpose of frustrating and intimidating Delcard's employees from entering the jobsite.

By the foregoing conduct, the Union violated Section 8(b)(1)(A) of the Act. As indicated, despite the Union's conduct, Delcard's employees, sometimes with police or security assistance, eventually got into work each day. However, it is established law that nonstriking employees have a statutory right to pass through picket lines without physical hindrance. Therefore "blocking an entrance or an exit even for a short period of time constitutes restraint and coercion" within the meaning of Section 8(b)(1)(A) of the Act. *Iron Workers Local 455 (Stokvis Multi-Ton)*, 243 NLRB 340, 346 (1979); *Metal Polishers Local 67 (Alco-Cad Nickel)*, 200 NLRB 335, 336 (1972). The Union could not, as it claimed to do here, arrogate to itself the right to determine when and under what conditions employees could pass through its picket lines. Therefore the Union violated Section 8(b)(1)(A) by physically blocking entrances to the Stone & Webster jobsite, including picketing in such a manner as to impede or prevent access to the jobsite.

The Union, and specifically Bush, also violated Section 8(b)(1)(A) by expressly and impliedly threatening Delcard employees with violence because they sought to go to work through the Union's picket lines. *G & H Towing Co.*, 168 NLRB 589, 591-592 (1967); *Teamsters Local 115 (Oakwood Chair)*, 277 NLRB 694, 698 (1985). The Union further violated Section 8(b)(1)(A) by striking, kicking, rocking, and in some instances causing damage to vehicles carrying Delcard employees. Whether or not vehicles were damaged, the Union's conduct was part and parcel of its picket line campaign, including threats, designed to intimidate employees who sought to cross the picket line. Such conduct is coercive and unlawful. *Laborers Local 721 (Crouse Nuclear)*, 256 NLRB 195, 200 (1981); compare *Iron Workers*, supra at 348.

B. The Omni Case

On March 29, 1993, Union Organizer Pat Keenan set up an area standards picket line at the entrance to the offices and shop of Omni, located at 69 Congo Road, Gilbertsville, Pennsylvania.³ Omni is nonunion. The picketing continued for about 2 weeks, and thereafter intermittently for about 2 months. However the only alleged violations occurred on the first day of picketing. The complaint alleges that on March 29, in connection with its picketing, the Union on two occasions blocked ingress of employees to Omni's facility, and thereby violated Section 8(b)(1)(A) of the Act.

Congo Road is a two-lane country road. The Omni facility is located in a residential area. The facility is connected to Congo Road by a driveway which is about 75 feet in length

and 8 to 10 feet wide. At the end of the driveway, Omni's offices are to the left and its shop to the right. There are trees which block view of the Omni facility from Congo Road.

Organizer Keenan, the Union's only witness with respect to this matter, testified in sum as follows: He set up the picket line at the driveway entrance at about 6:20 a.m., with six pickets and himself. He instructed the pickets to keep moving back and forth, to move out of the way if someone wanted to enter, and to let Keenan do the talking. The pickets followed these instructions. The pickets, including Keenan, wore signs protesting Omni's alleged destruction of Sheet Metal industry standards.

General Counsel presented two Omni employees as witnesses. Sheet metal mechanic Lance Utley testified in sum as follows: At about 6:40 a.m. on March 29 he approached the Omni facility in his car, a 1991 black Chevrolet, accompanied by his helper, Larry Moners. Utley intended to drop off some papers and pick up material for a job. It was a sunny day. He proceeded to make a left turn toward the driveway, using his directional signals. There were no other vehicles in the vicinity. His vehicle was facing the center of the driveway. There were 7 to 10 pickets at the driveway entrance, circling and blocking his way. They came toward his car. Utley inched forward. He said to the pickets: "Come on guys, I got to get in there and go to work." The pickets shook their heads negatively, and did not move. After about 1 minute, Utley said he would call the police. He waited a total of 3 to 5 minutes. Utley then turned around, drove to a nearby convenience store, and called the shop foreman, who in turn called the police. Utley did not go to the facility that day. He gave his paperwork to another employee (Merwin Dumbar), and proceeded to his job. However, as he did not pick up the material, he ran out of work, and went to another job.

Shipper-receiver Merwin Dumbar testified in sum as follows: At about 6:45 a.m. he arrived at the facility, driving alone in his 1981 Dodge light blue compact station wagon. Most shop employees (about four or five) had already arrived. Office employees normally reported to work between 7:30 and 8 a.m. Dumbar positioned his vehicle to make a right turn into the driveway. There were six or seven pickets in the driveway, one of whom (evidently Keenan) stood to one side. Dumbar proceeded at 10 to 15 miles per hour, and got about 6 or 7 feet into the driveway, but the pickets blocked his path. He asked a picket if they were going to let him enter. One picket answered no, and the pickets remained in his way. Some walked back and forth, and others stood. Dumbar waited for 1 to 2 minutes. (He subsequently testified that he waited 2 to 3 minutes.) He then backed out and proceeded to the nearby convenience store, where he found Utley. Dumbar took Utley's paperwork and proceeded to a nearby school parking lot, where he awaited the police. The police escorted him into the Omni facility before 8 a.m. Dumbar subsequently left the facility on business, and returned about 9:30 a.m., where he waited briefly until the pickets moved out of his way.

Organizer Keenan testified in sum as follows: On the first day of picketing, a small black car approached the entrance to the Omni facility from the south (opposite) side of Congo Road. The driver made a left turn signal, stopped at the driveway entrance for about 12 to 15 seconds, and then

³ All dates herein for the Omni and Stong cases are in 1993 unless otherwise indicated.

turned around and proceeded down Congo Road. Keenan did not see this car return to the facility. Next, a red Pinto hatchback approached the entrance. The pickets moved aside and this vehicle entered. Next, a light blue pickup truck entered the facility. The driver later stopped to ask questions of Keenan as he left the facility. The fourth vehicle to approach the facility was a light blue Plymouth station wagon (apparently the Dumbar vehicle). The driver, who approached from the north, initially stopped in front of a house next to the driveway. Then he pulled up to the driveway, used his right turn signal, but did not turn into the driveway, stopped for 10 to 15 seconds, and then drove off. Meanwhile, the pickets continued to walk back and forth and did not approach the vehicle. About 10 minutes later, the driver returned with a police escort and entered the facility. To Keenan's knowledge, nothing was said between the driver and the pickets.

Keenan further testified that about 6:30 a.m., he set up a video camera in his vehicle, which was parked across Congo Road. He positioned the camera to face the driveway entrance and picket line. Keenan testified that the camera did not run continuously and was also used on other days of picketing. The purported March 29 videotape was introduced in evidence.

The videotape corroborates Keenan's testimony that the weather was rainy and cold that day. The tape also indicates that a vehicle matching the description of Dumbar's station wagon, approached the driveway from the north, but drove away without any evident attempt to enter the driveway. About 10 to 15 minutes later the vehicle returned with a police escort. Keenan testified without contradiction that no other vehicles entered the driveway with a police escort that day. The tape also indicates that the Union had as many as seven or eight pickets in the driveway, picketing in such a manner as to block entrance of any vehicle, unless the pickets stepped aside.

However, in other respects the videotape raises more questions than it answers. The tape does not, as admitted by Keenan, show the Utley vehicle, or any other vehicle, approaching or attempting to enter the Omni facility prior to the Dumbar vehicle. The tape purports to show that prior to the approach of the Dumbar vehicle, a light blue pickup truck, leaving the facility, stopped or was stopped at the picket line for nearly a minute. However, according to Keenan's testimony, this incident occurred after the four vehicles which he described, including the pickup truck, approached or entered the Omni facility. Following the incident as filmed, there is an unexplained break in the tape. The tape fails to show any vehicle entering the facility prior to arrival of the police car. Moreover, as admitted by Keenan, it is possible that the Dumbar vehicle could have stopped at the driveway, but out of range of the camera (although he denied that this occurred).

I find that the Union's pickets, at the direction and with the participation of Organizer Keenan, intentionally blocked access of Utley, Moners, and Dumbar to the Omni facility on March 29. Utley and Dumbar probably exaggerated the amount of time and effort they expended in order to enter the facility unaided. However I credit their explanation, in effect, that they drove away when it became apparent that the pickets would not let them through. I have taken into consideration the large number of pickets (seven or eight), in this

narrow driveway, i.e., more than enough to convey the Union's grievance. I have also taken into consideration the conspicuous lack of corroboration of Keenan's testimony concerning the Utley vehicle. No other picket testified concerning the Omni case. On the basis of Keenan's narrative, Utley's approach should have been filmed on videotape. However it did not appear, and the tape sequence is both obviously incomplete and inconsistent with Keenan's narrative. The inference is warranted, and I so find, that a complete tape would not have corroborated Keenan's testimony with respect to the Utley approach. Moreover, even according to Keenan, both Utley and Dumbar signaled their intention to turn into the picketed driveway, and each waited 10 to 15 seconds before driving away. As indicated by Keenan's videotape, the pickets had no difficulty in clearing the driveway in less time when a police car approached. It is undisputed that the pickets did not move out of the driveway before Utley and Dumbar drove away.

For the foregoing reasons, I find that the Union violated Section 8(b)(1)(A) of the Act, as alleged, at the Omni facility. *Iron Workers*, supra; *Metal Polishers*, supra.

C. The Stong Case

Stong is a nonunion contractor. About November 1992, several local labor organizations affiliated with the Building & Construction Trades Council of Philadelphia & Vicinity (herein BCTC), commenced an organizational campaign among Stong's employees. On March 12, 1993, BCTC and the local unions (Road Sprinkler Fitters Local 669, Steamfitters Local 420, Plumbers Local 74, Sprinkler Fitters Local 692, Plumbers Local 690, and the present union), petitioned for a Board-conducted election in a single unit comprising all Stong employees performing construction and/or fabrication work in Philadelphia and its vicinity (Case 4-RC-18058). In the words of Union Organizer James Hochberg, the petitioning unions conducted "a joint campaign" to organize and represent the employees. Marvin Martin of Local 669 acted as chief spokesman. Local 420 handled most mailings. The unions conducted meetings for all trades. The election was conducted on May 13. The petitioning unions lost the election, i.e., a majority of employees voted against union representation.

Meanwhile, Swarthmore College, which is located in Delaware County, Pennsylvania (within the territorial jurisdiction of BCTC), commenced a project which involved conversion of the ground floors of three campus buildings into dormitory spaces. Haverstick-Borthwick Company (Haverstick) was general contractor for the project. There were some 20 to 25 subcontractors, including Stong. Stong's subcontract covered sprinkler work, installation of plumbing and piping, steamfitter work, and related insulation. Haverstick and all of the subcontractors except Stong were union firms. Major work began in May, at the end of the school year, and continued to mid-August.

When the project commenced, Swarthmore College (Swarthmore) established and posted three separate entrances to the campus for access to the project. Gate 1, located at Harvard Avenue, was posted and reserved as a "primary gate" for exclusive use by Stong, its employees, suppliers, vendors, and persons doing business with it. Gate 2, located at Route 320 (Chester Road) and gate 3, at Field House

Road, were posted and reserved as “neutral” gates, for use by all other persons.

On June 2, picketing commenced at the Swarthmore project. General Counsel contends, in sum, that the Union, together with Sprinkler Fitters Local 692, Plumbers Local 690, Steamfitters Local 420, and Asbestos Workers Local 14 (respectively Local 692, Local 690, Local 420, and Local 14), in furtherance of their primary labor dispute with Stong, engaged in the picketing pursuant to a common plan as a joint venture, with common objectives. General Counsel contends that consequently the Union is responsible not only for its own unlawful conduct in connection with the picketing, but also for that of the other picketing unions. (The other unions are not named as respondents in this proceeding.) General Counsel further contends that the Union, in connection with the picketing at gate 1, violated Section 8(b)(1)(A) of the Act by blocking ingress of employees to the jobsite and impliedly threatening employees with violence. General Counsel also contends that the Union violated Section 8(b)(4)(i) and (ii)(B) by picketing and related inducement of neutral employees at gates 2 and 3.

The Union does not contend that it had a primary dispute with any employer or person on the job other than Stong. The Union also does not contend that the reserved gates were improperly marked and set aside or that they were misused. The Union admits that it engaged in picketing at gate 1 in furtherance of its area standards dispute with Stong. However, the Union denies that it was engaged in a joint venture with the other picketing unions, or that it picketed at gates 2 or 3, or that it violated Section 8(b)(1)(A) or 8(b)(4)(i) and (ii)(B) of the Act. I shall first address the joint venture issue.

1. The joint venture issue

It is undisputed that Locals 692, 690, 420, 14, and the Union (herein collectively the picketing unions) picketed at gate 1 during the period from June 2 through July 22, using signs protesting alleged destruction of area standards by Stong, together with the name of one of the picketing unions. Stong Foreman Steve Adamek kept a daily log in which he recorded, among other information, the identity of the union whose name appeared on the signs on each day of the picketing. The log indicates that Local 690 commenced picketing on June 2, 3, and 4, and thereafter followed a pattern of picketing on Mondays and Wednesdays throughout the month of June. Thereafter Local 690 picketed on Friday, July 2, Wednesday, July 7, and Tuesday, July 13. The log indicates that Local 420 picketed on Tuesdays throughout the picketing, except on June 22, when no signs appeared, and July 13. The log further indicates that Local 692 picketed Thursdays, commencing June 10, throughout the picketing. The log also indicates, and the Union admits, that it picketed on four Fridays: June 11, 18, 25, and July 9. The log indicates that Local 14 picketed on Wednesday, July 14, Friday, July 16, Monday, July 19, and Thursday, July 22, the last day of picketing. On each day of picketing, the name of only one union appeared on the signs.

All of the picketing unions except Local 14 were petitioners in the May election. All were affiliated with BCTC, a subsidiary group (Delaware and Chester County Building Trades) and a Mechanical Trades Council. All but the Union and Local 14 were affiliated with the same International union.

Local 690 Business Agent Joseph Mulholland, who was presented as an adverse General Counsel witness, testified in sum as follows: About a month before the picketing, he learned that Stong got the subcontract on the Swarthmore project. He discussed the situation with representatives of the other unions, including Union Business Representative William (Bud) Farally (Local 19), at their various council meetings. All understood that Stong operated below area wages and standards. Mulholland visited the jobsite several times, variously accompanied by Farally and representatives of Local 420 and Local 14, to learn if Stong had commenced work. Mulholland informed the representatives of the other unions that Local 690 intended to picket Stong at the job. About the time Local 690 commenced picketing, the other representatives indicated that they would join in the picketing if they determined that Stong was doing work within their respective trade jurisdictions. On June 4, they discussed the days that each union would picket. Mulholland said that he preferred Monday. Local 420 took Tuesday, the Union took Friday, and Local 692 took either Wednesday or Thursday. They agreed that each union would have three or four pickets at gate 1. Local 690 had more pickets on the first days of picketing. The picketing unions also agreed to post “observers” at the neutral gates. (This aspect will be discussed further at later points in this decision.) On June 11, at BCTC, the unions discussed how the picket line was progressing, problems, if any, in connection with the picketing, and the number of pickets.

Union Business Representative Farally was presented as an adverse General Counsel witness and as a witness for the Union. Farally, in his testimony, did not dispute Mulholland’s testimony as described above. Farally testified in sum that each of the picketing unions made its own decision to picket Stong at the job, and that each selected a day to picket, because “there was no sense to have four or five trades with picket lines there every day.” Farally, on behalf of the Union, selected Friday. However Farally admitted that all of the unions had the same purpose in picketing.

As indicated, Local 14 was a latecomer to the picketing. Farally explained that he learned that asbestos workers were entering the project through gate 1, and so informed Local 14’s business agent.

In April, prior to the picketing, handbills were distributed at Swarthmore, protesting that Haverstick, as general contractor, hired an (unnamed) plumbing, heating, and air-conditioning contractor who paid substandard wages and benefits.

Local 420 Business Representative Thomas Gallo testified that in late April, his union distributed such handbills at Swarthmore, and that representatives of the Union participated in such distribution. Gallo initially testified that the handbills identified only Local 420, but subsequently asserted Local 420 and the Union each used its own handbill. Union Organizer Hochberg testified in sum that the Union distributed its own handbill (which he identified), bearing the same text as the Local 420 handbill, but bearing the name of his union. General Counsel introduced in evidence a “picket expense record,” dated April 23, for picketing at Swarthmore, indicating that Gallo purchased coffee and donuts for “7 fitters” and “6 sheet metal workers.” Gallo testified that he approved the expense and that the sheet metal workers were from the Union. It is undisputed that in late July, after the picketing ceased, the picketing unions distributed handbills at

various locations, using the same text, over the name of the five picketing unions.

In late June, while the picketing was in progress, Haverstick President Bill Cobb and Project Manager George Earle met with Local 690 Representatives Ed Keenan and Mulholland at Haverstick's office. Earle and Mulholland were witnesses in this proceeding. Earle testified in sum as follows: Cobb requested the meeting but did not want to meet with more than two representatives of the picketing unions, and specifically, did not want to meet with Local 19 Union Business Manager Thomas Kelly. Keenan said that he and his subordinate, Mulholland, represented all four striking unions, and that he was speaking for them (Local 14 had not yet joined the picketing). Keenan said that they were engaged in a collective action, but that Haverstick's office was too small to enable representatives of all the unions to be present. Keenan asked how Stong, a nonunion contractor, got the mechanical subcontract. Earle explained that Stong's bid was \$40,000 less than that of a competing union contractor. He asserted that Swarthmore was engaged in a major building program, and the picketing jeopardized union work on the project, including Haverstick's role as general contractor. Keenan said that he and the other unions did not want to lift the picketing. Nothing was resolved at this meeting.

Mulholland, in his testimony, confirmed that he and Keenan met with Cobb and Earle. Mulholland testified that he did not recall he or Keenan saying that they spoke for the other picketing unions. However Mulholland confirmed that Cobb said he would not meet if Union Business Manager Kelly were present.

Union Business Representative Farally testified, in sum, that he learned about the meeting after it occurred, was not invited to the meeting, and did not give permission to anyone to speak for the Union. Farally asserted that no one other than an official of the Union had authority to speak for the Union at such a meeting. However Farally further testified, in sum, as follows: About the same time as that meeting, he set up and participated in another meeting with representatives of Swarthmore. BCTC Manager Pat Gillespie was present, together with representatives of affiliated local unions, including Gallo of Local 420 and Mike Burns of Local 14. Farally variously testified that he invited Gillespie because he was respected and an "asset," as a "courtesy," as a matter of "policy," and because the problem "would affect all of the building trades." Farally argued that Swarthmore acted "out of character" by exploiting workers and destroying area wages and standards. Farally regarded Swarthmore and its student body as generally sympathetic to organized labor. The participants in the meeting discussed Swarthmore policy and why Stong was on the job, and "we [the union representatives present] wanted to know where we were going in the future."

Farally also participated in a third meeting, which resulted in cessation of the picketing. Farally testified in sum as follows: The meeting was arranged by union plumbing contractor Herman Goldner, and took place in Gardner's office. Representatives of Swarthmore were present, together with Farally, Mulholland of Local 690, Pat Adding of Local 14, and Jack Gallagher of Local 692. Local 420 may not have sent a representative. Goldner expressed concern that he and other union contractors might be thrown off the job because people were honoring the protest. In Farally's words, "we

had to make a decision" whether or not to "continue the protest." Therefore "we caucused" and "we made a decision . . . to bring the line down at that point." The picketing union representatives "felt we had a commitment on future work on paying workers the area wages and standards in the future on work." Mulholland similarly testified that "we had a discussion and agreed to take the line down." There was no further picketing.

As indicated, each participating union ostensibly had its own day or days of the week for picketing. In fact, the ostensible schedule was not consistently followed, and there was frequently mixed presence of union representatives at both the primary and neutral gates. It is undisputed that on June 3 Local 420 Business Representative Gallo led Local 690 picketing at gate 1. Gallo was videotaped engaging in such conduct. Gallo testified that on an occasion or two he picketed with other unions. Business Representative Farally testified that he stopped by the picket line on days other than Friday, remaining for an average of 10 to 15 minutes, that he also stopped by at the neutral gates, and that Mulholland stopped by on Fridays when the Union was picketing. Organizer Hochberg testified that he may have gone to the picket line more than twice when other unions were picketing, and may have stayed up to 2 hours. Hochberg testified that on such occasions he would answer questions about the picketing. Local 690 Business Agent Mulholland testified that he may have stood with "observers," including Farally and Local 692 Business Agent Wayne Miller, at neutral gates.

Organizer Hochberg testified that he was on vacation during the first 2 weeks of July. As indicated, Local 690 picketed on Friday, July 2. Subsequently, Local 14 picketed on Friday, July 16. As the Union ostensibly chose Friday as its day for picketing, it is evident that Local 690 and Local 14 picketed on these Fridays pursuant to an arrangement with the Union.

General Counsel correctly states the principles of law applicable to this issue. A joint venture relationship carries with it responsibility on the part of the participants for each other's actions, including any consequent unfair labor practices. *Seattle District Council of Carpenters (Cisco Construction)*, 114 NLRB 27, 30 (1955). "To establish a joint venture it must be demonstrated that the venturers participated in a planned course of action, jointly conceived, coordinated and adopted to attain a mutually agreed upon object." *General Teamsters Local 126 (Ready Mixed Concrete)*, 200 NLRB 253, 272 (1972).

The evidence in this proceeding, and summarized above, demonstrates that the five picketing unions engaged in their picketing at Swarthmore as a joint venture. Indeed, even the testimony of Farally and Hochberg demonstrates the elements of a joint venture. As indicated, Farally admitted that all of the unions had the same purpose in picketing.

At every stage, unions affiliated with BCTC, including the picketing unions, coordinated their activities in furtherance of their shared dispute with Stong. Initially, they conducted a single organizational campaign, and filed an election petition, seeking one bargaining unit. When they learned that Stong obtained a subcontract for the Swarthmore project, the Union and Local 420 jointly distributed handbills, protesting the award. After the picketing ceased pursuant to their agreement, the picketing unions abandoned any pretense of sepa-

rate action, and jointly distributed handbills, identifying all five unions, and continuing their protest.

Initially, Local 690 commenced the picketing. However the Union, Local 692, and Local 420 soon joined in, and the four unions worked out and coordinated picketing at the Swarthmore jobsite. They mutually arranged days for each union to picket, agreed upon the manner of picketing, including the number of pickets and the posting of "observers" at the neutral gates. They monitored and consulted with each other, and exchanged information, with respect to the progress of the picketing. When the Union learned that Stong was performing insulation work, Farally informed Local 114, and the unions adjusted their picketing schedules to enable Local 14 to participate in the picketing. Local 690 substituted for the Union when organizer Hochberg went on vacation. Representatives of the Union were present at each other's picket lines. As indicated, Local 420 Business Representative Gallo even led picketing by Local 690.

The most telling evidence of a joint venture consists of the meetings with Haverstick, Swarthmore, and Goldner. As indicated, Haverstick president Cobb requested that only two representatives from the picketing unions be present at the first meeting. It is evident that Cobb did not request the meeting simply to persuade Local 690 to cease picketing, while leaving the other picketing unions free to continue. Therefore it is also evident that when Cobb made, and Keenan agreed to the request, both sides understood that Keenan was authorized to and did speak on behalf of all of the picketing unions. As indicated, Mulholland was equivocal in this regard, testifying that he did not recall that he or Keenan said they spoke for the other unions. I credit Project Manager Earle. I find that Keenan said that he and Mulholland represented all of the picketing unions, and were speaking for them, and that in fact, the picketing unions authorized Keenan and Mulholland to represent and speak for them.

I further find that at the second meeting, the union officials present, in particular BCTC Manager Gillespie, were authorized to represent and speak on behalf of the picketing unions. As with the Haverstick meeting, there would be no purpose in Swarthmore meeting with representatives of some of the picketing unions to determine their terms for ceasing the picket line, unless Swarthmore was assured that those present spoke for all picketing unions, and consequently, could negotiate an end to the picketing. As indicated, Farally admitted at one point in his testimony that he invited Gillespie because the problem would affect all of the building trades.

The third meeting, at Goldner's office, was the clincher. At that meeting, representatives of the picketing unions, after hearing Goldner's plea, consulted together and arrived at a decision to pull what Farally described in the singular as the picket "line." They concluded that by their picketing, they had achieved an acceptable compromise on their common goal, insofar as they felt they had an assurance with respect to future work. The picketing promptly ceased, even though officials of Local 692 may not have been present at the meeting.

In sum, the picketing unions, including the Union, engaged in their picketing pursuant to a common plan and as a joint venture. See, e.g., *Carpenters District Council of Milwaukee (Westra Construction)*, 224 NLRB 1071, 1081 (1976). Therefore the Union, the respondent herein, is responsible not only

for its own unfair labor practices, but also for any other unfair labor practices committed by the other picketing unions in connection with the picketing.

2. Alleged violations of Section 8(b)(1)(A) at gate 1 (the primary gate)

The complaint alleges that on or about June 2, 3, 8, 11, 15, and 16, the Union by its agents and representatives, in connection with the picketing, blocked ingress of vehicles driven by employees to the jobsite. The complaint further alleges that on or about June 18, the Union by its agent and representative, carried a baseball bat on the picket line in the presence of employees. The complaint alleges that the Union thereby violated Section 8(b)(1)(A) of the Act.

Steve Adamek is a foreman mechanic for Stong. He was an eligible voter in the May election. Adamek was Stong foreman on the job, in charge of a crew which averaged six employees. In June the crew consisted of three mechanics and one apprentice. Adamek testified that he reports to Stong's project manager. Adamek shows crew members the work which they are to perform, and when necessary, directs or guides them in their work. He does not hire, fire, or discipline employees. However he will report problems to Stong's supervisor for its plumbing contract division, or to Haverstick's site foreman. The Union does not contend that Adamek was a supervisor. I find that Adamek was an employee within the meaning of the Act.

Adamek testified in sum as follows: On June 2, he drove alone to the Swarthmore jobsite in an unmarked Stong van, arriving about 7:15 a.m. The entrance to gate 1 is 10 to 15 feet wide, with stone pillars on each side. About 10 pickets, with Local 690 signs, were walking in a tight semicircle, blocking the entrance. Adamek turned toward the entrance with his directional signal on, but the picketing continued. Adamek waited for about 2 minutes. As he was blocking traffic, Adamek drove away. He telephoned his supervisor, and then returned to gate 1, but the same thing happened again. Adamek returned to Stong's shop, and did not enter the jobsite that day. This was the only day on which Adamek was unable to work at the site because of the picketing.

On June 3, Adamek arrived at work in the unmarked van, accompanied by apprentice Mark Benzinger. Pursuant to Stong's instructions, Benzinger brought a video camera. Benzinger filmed the picketing on June 3 and subsequent days. Portions of his videotape were introduced in evidence. The videotape, and Adamek's testimony, indicates that on most days the picketing was conducted in a similar manner, regardless of which union's name appeared on the signs. Six or more pickets marched in a tight semicircle, blocking the entrance. However their readiness to permit Stong personnel to enter varied from day to day. On some days, Adamek and Benzinger entered the jobsite with minimal or no delay or inconvenience. I shall at this point summarize the evidence with respect to those days on which the complaint alleges that the Union blocked ingress to the jobsite.

On June 3, as on June 2, the pickets would not permit Adamek to enter, Adamek left and called the police. He returned to gate 1 and again unsuccessfully sought to enter. The police chief arrived and requested the pickets to move. The pickets moved, and Adamek entered the jobsite.

On June 8 the pickets wore Local 420 signs. This time Adamek verbally asked the pickets to let him enter. He had

not previously spoken to the pickets. He repeated his request three times. One picket told him to read the sign. Adamek read the sign, and so informed the picket, but the pickets did not move. The picket said: "I'm here to protect my [first] amendment . . . Constitutional right." Meanwhile, Adamek was blocking traffic on the road. Adamek evidently later entered the jobsite.

On June 11 the pickets wore the Union's (Local 19) signs. Business Representative Farally and Organizer Hochberg were present. Adamek asked to enter the jobsite, but the pickets did not move or answer him. Farally approached Adamek and repeatedly questioned him. Farally asked Adamek who he was, for whom he worked, his trade, whether he was paid area standards, and whether others approaching the picket line worked for Stong. Adamek answered his questions. Farally then told Adamek to enter slowly. Adamek and Benzinger were stopped at the picket line for about 4 minutes. After Adamek entered the jobsite, another van, carrying two Stong employees, approached the picket line. Farally similarly approached the second vehicle before permitting the occupants to enter. A videotape, filmed by the Union, confirms that Adamek was stopped for about 4 minutes, while Farally procrastinated and the pickets blocked the gate, and that consequently traffic, including a schoolbus, was blocked on the road. Organizer Hochberg, in his testimony, admitted that Farally delayed for several minutes before permitting the van to enter.

On June 15 Adamek approached the picket line in the van, accompanied by Benzinger and two other Stong employees. The pickets carried Local 420 signs. Adamek repeatedly asked for permission to enter, but the pickets ignored his requests. Adamek told the pickets he would call the police, but the pickets continued to ignore him. Adamek left and called the police, who arrived and enabled him to enter the jobsite.

On June 16 Adamek and the three other Stong employees again arrived at the picket line in the Stong van. Local 420 Business Representative Gallo led the Local 690 picketing. Again Adamek repeatedly requested to enter, and again the pickets ignored him. One picket told him to read the sign. Adamek informed the pickets when he read the sign, but they still did not give way. Adamek again had to summon the police in order to gain access to the jobsite.

The complaint does not allege unlawful blocking on Friday, June 18, the second day of Union (Local 19) picketing. However it is undisputed that when Stong vehicles arrived, one of the pickets was holding a baseball bat. Benzinger's videotape does not show the picket, although Adamek can be heard mentioning him on the audio portion. The Union's videotape shows the picket tapping the bat on the ground. Adamek testified that when he and the other three employees arrived in the Stong van, the picket was carrying a baseball bat. He switched the bat from one hand to another, tapped the bat on the ground, and then put the bat on his shoulder and walked away. Adamek had no difficulty entering the jobsite.

Organizer Hochberg and Local 690 Business Agent Mulholland were present at the picket line on June 18. Hochberg testified that the picket was hitting stones and golf balls with the bat. He variously held the bat on his shoulder, leaned on it, or took practice swings. Hochberg testified that he had no objection to the picket having a bat or using it

in this manner, but he told the picket to behave himself. There was no baseball game at the picket line.

The facts described above are substantially undisputed. As discussed, the Union as joint venturer was responsible for unfair labor practices committed during the course of the picketing. I find that the Union, by its own pickets and the pickets of its agents, the coventurer unions, blocked and impeded access of Stong's employees to the Swarthmore jobsite on June 2, 3, 8, 11, 15, and 16. For the reasons discussed in connection with the Delcard case, the Union thereby violated Section 8(b)(1)(A) of the Act. It is evident that the picketing unions engaged in a pattern of conduct designed to harass and intimidate Stong's employees from working at the Swarthmore jobsite.

I specifically find that the Union violated Section 8(b)(1)(A) of the Act by its conduct on June 11. As discussed, a union has no right to arrogate to itself the authority to determine when and under what conditions employees may pass through its picket lines. Here, the Union had no right to require Stong employees to answer a laundry list of questions as a condition of reporting to work. Moreover, the circumstances indicate that Farally was seeking to harass and delay the Stong employees rather than obtain necessary information. Farally testified that he questioned the drivers of vehicles approaching the picket line in order to inform Haverstick employees to use the neutral gates. Farally's explanation is incredible. Farally would undoubtedly be delighted if neutral union employees chose to approach the jobsite at the primary gate, and thereby have to confront a picket line. This is particularly true in light of the Union's conduct at the neutral gates, which will be discussed. The employers, rather than the picketing unions, would have reason to be concerned if neutral employees used the primary gate.

I further find that the Union, by its picket and with the approval of Organizer Hochberg, violated Section 8(b)(1)(A) by carrying a baseball bat on the picket line. In the context of a campaign of picket line harassment extending over 2 weeks, the Union's conduct constituted an implied threat of physical violence. See *Clear Pine Mouldings*, 268 NLRB 1044, 1047 (1984), *affd.* 765 F.2d 148 (9th Cir. 1985), *cert. denied* 474 U.S. 1105 (1986); *Production Workers Local 10 (Block & Co.)*, 285 NLRB 382, 383, 385 (1987).

3. Alleged violations of Section 8(b)(4)(B) at the neutral gates

The complaint alleges that in the course of the picketing the Union, on or about June 15 and 18 and July 17 or 19, induced and encouraged employees of Haverstick and other union contractors on the job to engage in work stoppage, and threatened, coerced, and restrained those employers, in order to force the subcontractors to cease doing business with Haverstick, and thereby force Haverstick to cease doing business with Stong.

As indicated, the picketing unions agreed to post "observers" at gates 2 and 3, the neutral gates. Each picketing union, on the day it picketed at gate 1, posted these observers, with signs, at gates 2 and 3. Union Organizer Hochberg testified in sum as follows: He assigned two observers to each of the two neutral gates and gave one of the observers at each gate a sign to wear, which Hochberg prepared. The sign consisted of a picket sign, addressed to a labor dispute involving a different employer (not a contractor at the

Swarthmore project). Hochberg wrote the word "observer" in black marking pen on the reverse side of each sign. The observer with the sign was to stand at the side of the entrance.

Hochberg further testified in sum as follows: He normally stationed himself at gate 1. However between 7:30 and 8 a.m., after Stong's employees entered the project, he would go to the neutral gates to check the observers. On such occasions he himself would function as an observer. If asked about the picketing, he would inform employees and other persons approaching the neutral gates that the Union was disputing Stong's wages and standards. The employees were allowed to enter the jobsite. Hochberg instructed the other observers not to tell anyone not to cross the Union's picket line. However he did not instruct the observers not to say that the Union had an area standards dispute with Stong. On one occasion Hochberg observed as many as four or five people standing at a neutral gate, with one of them wearing an observer sign.

Hochberg also testified in sum as follows: On one occasion, at gate 3, he saw an observer (a member of the Union) with the area standards dispute side of the sign facing the gate. Previously the signs were worn correctly. He instructed the observer to reverse the sign. Thereafter Hochberg cut the signs in half, and from then on the signs always appeared with the observer side facing outward.

Business Representative Farally testified that he also moved from one gate to another, and also sometimes acted as an observer. Farally testified that the Union posted observers at the neutral gates in order to determine if Stong personnel or suppliers were using those gates. Farally admitted that there was no indication of such use.

General Counsel presented testimony by three Haverstick management personnel concerning the picketing unions' activity at the neutral gates.

James Balbierer was jobsite superintendent for Haverstick. He was responsible for coordinating the work of subcontractors and assigning work to Haverstick employees. He is a member of Carpenters Local 845. Balbierer testified in sum as follows: He arrived at gate 3 about 6:45 a.m. on June 2, driving alone. Three men were standing at the side of the entrance, with signs. Balbierer saw that one sign said "observer." He asked if this was a picket line. One of the men answered "No . . . we're observers." Balbierer asked what he should do. The man said he could not tell Balbierer what to do, and suggested he call his business agent. Meanwhile, union carpenters and laborers employed by Haverstick arrived at gate 3. Balbierer was unable to reach his business agent. He and the other Haverstick employees decided not to enter the jobsite. They also did not work at the site on June 3. Haverstick assigned the employees to a different job.

Balbierer further testified in sum as follows: In late July he drove to work, and approached gate 2. About three men walked in the driveway, carrying picket signs. The signs identified them as Asbestos Workers, and contained language to the effect that they were protesting the Employer's use of unfair labor. Balbierer did not see any employer's name on the signs. As Balbierer drove through the gate, one of the men yelled "you're going through a picket line."

John Shannon was general superintendent for Haverstick. Shannon testified in sum as follows: A supervisor reported to him that there was a disturbance at the jobsite. On Tues-

day, June 15, at about 6:30 a.m., he went to gate 3 to investigate the situation. About six to eight people were moving across the entrance. Some wore "observer" signs. They did not display any union affiliation. As Shannon approached the gate in his vehicle, which bore Haverstick logos on the doors, several of the persons, who did not wear signs, walked slowly across the entrance, causing Shannon to slow down. However the persons promptly moved aside, permitting Shannon to enter the jobsite. Haverstick's employees worked that day.

On Friday, June 18, the Union posted "observers" at gates 2 and 3. It is undisputed that at that time, a member of the Union was present at gate 2, wearing a rat costume. Business Representative Farally was also present as an observer. Farally testified that the term "rat" connotes destruction of wages, and the Union owns a rat costume which it uses as a "form of protest." Haverstick Project Manager Earle testified that on June 18, four persons, including Farally and Local 690 Business Agent Mulholland, were present with the person in the rat costume. Earle testified in sum that he understands the term "rat" to connote nonunion conditions. Earle further testified that at gate 3, when he arrived shortly before 7 a.m., two men were carrying union (Local 19) signs, indicating a protest against an employer whose name Earle did not recognize.

"The words 'induce or encourage' [in Sec. 8(b)(4)(B) of the Act] are broad enough to include in them every form of influence and persuasion," including but not limited to so-called "signal picketing." *Electrical Workers IBEW Local 501 v. NLRB*, 341 U.S. 694, 700-702 (1951). Picketing at a common situs (as here, a construction site), conducted at an entrance marked, set aside and used exclusively by neutral employers and their employees, constitutes conduct violative of Section 8(b)(4)(B) of the Act, regardless of whether the picketing has an effect of causing any work stoppage. Similarly, any other form of inducement or encouragement of a work stoppage at a neutral gate, e.g., oral appeals, violates Section 8(b)(4)(B) of the Act.

In the present case, it is uncontested that the Union had a labor dispute with Stong, the Union had no dispute with any other contractor at the Swarthmore project, and in furtherance of its dispute with Stong, the Union picketed the project. It is also uncontested that gates 2 and 3 were properly marked, set aside and reserved for the exclusive use of neutral employers and employees, and that to the Union's knowledge, there was no misuse of these neutral gates. The remaining question is whether the Union, by its own conduct or that of the other picketing unions at gates 2 or 3, induced or encouraged neutral employees to engage in work stoppages.

I find that the Union, in the course of its joint venture, by stationing so-called "observers" at gates 2 and 3, engaged in picketing at those neutral gates, and thereby violated Section 8(b)(4)(B) of the Act. As discussed, the evidence demonstrates that the Union, together with its coventurers, the other picketing unions, stationed as many as six to eight persons at the neutral gates. At all times, one or more of these persons wore or carried signs which were indistinguishable from any conventional picket signs, except that usually (but not always) the word "observer" was written on one side of the sign. The other side purported to protest an unfair contractor. On at least two occasions, as described by Balbierer

and Shannon, these persons patrolled across gate 2 or 3, in the same manner was what may be described as conventional picketing. On at least one occasion in late July (Local 14's day for picketing) these alleged "observers" dispensed with "observer" signs and simply used conventional protest signs. On that occasion, one of the stationed persons identified their conduct as a picket line. His statement may properly be considered as an admission that the stationing of "observers" by the joint venturers, was in fact a picket line. Therefore, if for no other reason, the Union, by its own stationing of "observers" and that through its coventurers, violated Section 8(b)(4)(B). See *Plumbers Local 274 (Stokely-Van Camp)*, 267 NLRB 1111, 1114 (1983); *Iron Workers Pacific Northwest Council Local 29 (Hoffman Construction)*, 292 NLRB 562 fn. 2 (1989).

I do not credit Business Representative Farally's assertion that the Union posted "observers" at gates 2 and 3 in order to determine if Stong personnel or suppliers were using those gates. Even if the assertion were credible, the system utilized by the picketing unions went beyond any reasonable means necessary to achieve that purpose, and in such a manner as to predictably enmesh neutral employees in the Union's dispute. If the Union wished to ascertain if there was misuse of the reserve gates, it could have done so in a discrete and inconspicuous manner, e.g. by making inquiries of stewards or other union representatives at the project, or stationing a person, without a sign and at a distance from the gate, in order to make clear that this was not a picket line. Instead, the picketing unions intentionally sought to create, or at least not dispel the impression that this was a picket line. By using picket signs captioned "observer," and containing conventional "unfair" language on one side, the picketing unions could and evidently did, create an impression that they were observing which union or other neutral employees had the temerity to work on an unfair job. At the outset of the picketing, when Superintendent Balbierer asked the pickets what he should do, they did not make clear that they were asking persons not to cross their "observer" line. Instead, they suggested that Balbierer call his business agent. As a result, union carpenters and laborers employed by Haverstick refused to work at the jobsite on June 2 and 3. In sum, the picketing unions failed to comply with their legal obligation to "do everything that is reasonably necessary to insure that secondary employees are not misled or coerced into observing the picket line." *Operating Engineers Local 12 (Hensel Phelps)*, 284 NLRB 246, 248 (1987), and cases cited therein.

I further find that the Union, by utilizing an "observer" in a rat costume, with the approval and in the presence of Business Representative Farally, intentionally sought to create the impression that this was an unfair job, and that the Union was requesting neutral employees, including deliverymen and suppliers (who might approach the gate at any time), not to enter the project. The Union thereby unlawfully induced and encouraged neutral employees not to perform services at the jobsite.

As indicated, I am of the view that the picketing unions' overall course of conduct at gates 2 and 3 was unlawful. However, the complaint is limited only as to certain dates. Consequently, I am limited as to the extent of unfair labor practice findings. I find, as alleged by General Counsel, that the Union, by and through its conduct and that of its coven-

turers, violated Section 8(b)(4)(B) of the Act by its picketing at neutral gates on June 15 (when some six to eight pickets patrolled across gate 3); on June 18 (when one of the pickets wore a rat costume); and in late July when pickets used conventional protest signs without any observer designation, and told Balbierer that he was going through a picket line. In sum, I find that the Union induced and encouraged employees of Haverstick and other neutral employers to engage in work stoppages, and coerced and restrained Haverstick and other neutral employers, in order to force Haverstick and Swarthmore to cease doing business with Stong. The Union thereby violated Section 8(b)(4)(B).

CONCLUSIONS OF LAW

1. Delcard, Omni, and Stong are each employers and persons engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Haverstick, Swarthmore, and Haverstick's subcontractors on the Swarthmore project, including Stong, Holzhauer Tile Company, Allen Brothers, Rite-Way Electric, and C. H. Shoemaker & Sons, were at all times material herein persons engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Union, Local 692, Local 690, Local 420, and Local 14 are labor organizations within the meaning of Section 2(5) of the Act.

4. At all times material herein, the Union, Local 692, Local 690, Local 420, and Local 14 were engaged in a primary labor dispute with Stong, and in furtherance of that dispute, engaged in picketing at the Swarthmore jobsite pursuant to a common plan and as a joint venture.

5. By restraining and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, the Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

6. By its picketing of reserved neutral gates at the Swarthmore jobsite, the Union has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Union has violated Section 8(b)(1)(A) and Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that the Union be ordered to cease and desist from such violations, and post and provide appropriate notices.

General Counsel and the Charging Parties seek an order that applies to all sites at which the Charging Parties' employees are present, both currently and in the future. General Counsel states that he does not seek a broad order which would apply to employers other than the Charging Parties. The Union argues that any remedy should be limited to the jobsites which were involved in these consolidated cases.

With respect to the matter of remedy, unlike the merits of alleged unfair labor practice allegations, the Board, and consequently the Administrative Law Judge, is not limited to the remedy sought by General Counsel and the Charging Party or Parties. Rather, responsibility for fashioning an appropriate remedy rests with the Board, subject to Section 10(c)

of the Act. *Kaumagraph Corp.*, 313 NLRB 624 (1994); *Sinclair Glass Co.*, 188 NLRB 362, 363 (1971), enf. 465 F.2d 209, 211 (7th Cir. 1972); *Government Employees Local 888 (Bayley-Seton)*, 308 NLRB 646 fn. 2 (1992).

With regard to the Section 8(b)(1)(A) violations, I find that a broad order, applying to employers generally, is warranted, because the Union has demonstrated a proclivity to engage in the kind of unlawful conduct here found, involving several employers. See *Carpenters (Reeves, Inc.)*, 281 NLRB 493, 499 (1986), citing *Sheet Metal Workers Local 80 (Ciamillo Heating)*, 268 NLRB 4 fn.1 (1983).

The evidence in the present cases demonstrates that the Union has engaged in a calculated pattern of unlawful picketing, directed at nonunion contractors, ostensibly by reason of alleged substandard wages and working conditions. In each instance, the Union's dispute was not limited to any particular jobsite. (In the Omni case, the Union picketed Omni's office and shop.) In each case, the Union engaged in "belly-to-back" picketing and blocking of access to the worksite. At the Stone & Webster jobsite, the picketing was accompanied by threats and acts of violence. At Swarthmore, the picketing was accompanied by an implied threat of violence. At Omni, the Union engaged in blocking of access on 1 day. However at the Stone & Webster and Swarthmore jobsites, the Union's unlawful conduct was prolonged and persistent. In each case, Union pickets engaged in the unlawful conduct with the participation, direction, and approval of union officials.

Given the nature of the construction industry, including the operations of Delcard, Omni, and Stong, characterized by multiple jobs of relatively short duration, an order limited to particular jobsites or facilities would be meaningless. The evidence also gives rise to a justifiable concern that unless restrained, the Union would predictably engage in similar unlawful tactics directed against nonunion mechanical trades contractors and their employees within the Union's territorial jurisdiction. Therefore, as indicated, I am recommending a broad cease-and-desist order with respect to the Section 8(b)(1)(A) violations.

The Union engaged in secondary boycott violations in furtherance of its dispute with Stong. However those violations, which as indicated were prolonged and persistent, resulted in disruption of the operations of Haverstick, a neutral employer, and threatened to disrupt the operations of some 20 to 25 subcontractors, and deliverymen and suppliers to the neutral employers and other persons. Here, I am recommending a conventional "medium order," i.e., one limited to the named primary (Stong), but not limited to named secondaries. See *Electrical Workers IBEW Local 501 v. NLRB*, supra at 705-706. "When the purpose to restrain trade appears from a clear violation of law, it is not necessary that all of the untraveled roads to that end be left open and that only the worn one be closed."⁴

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

⁴See also *Plumbers Local 704 (McRae Fire Protection)*, 290 NLRB 1073 (1988); *Teamsters Local 945 (Newark Disposal)*, 232 NLRB 1, 3-4 (1977), enf. 586 F.2d 835(T) (3d Cir. 1978).

⁵If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

ORDER

The Respondent, Sheet Metal Workers International Association, Local Union No. 19, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Restraining and coercing employees of Delcard Associates, Inc., Omni Mechanical, Inc., Joseph Stong, Inc., or of any other employer, in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, by blocking ingress or egress to jobsites, mass picketing, threatening to inflict bodily harm, attempting to or inflicting damage on property, or in any like or related manner restraining or coercing employees in the exercise of their Section 7 rights.

(b) Picketing at construction site gates reserved for use by neutral employers on jobsites where Joseph Stong, Inc. is engaged in work, or otherwise picketing for an object of forcing or requiring Haverstick-Borthwick Company or any other person to cease dealing in the products of or cease doing business with Joseph Stong, Inc.

(c) In any other manner or by any other means engaging in or inducing or encouraging any individual employed by Haverstick-Borthwick Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his or her employment to use, manufacture, process, transport, or to otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening, coercing, or restraining Haverstick-Borthwick Company, or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Haverstick-Borthwick Company, Swarthmore College, or any other person to cease dealing in the products of or to cease doing business with Joseph Stong, Inc.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its offices and meeting halls, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 4 signed copies of said notice for posting, if Delcard Associates, Inc., Omni Mechanical, Inc., Joseph Stong, Inc., Haverstick-Borthwick Company, and Swarthmore College are willing, in their respective facilities in the places where notices to employees and members are customarily posted. Copies of the said notice, on forms to be furnished by the Regional Direc-

adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁶If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

tor for Region 4, after having been signed by the Respondent's authorized representative, shall be forthwith returned to the Regional Director for such posting.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we have violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain or coerce employees of Delcard Associates, Inc., Omni Mechanical, Inc., Joseph Stong, Inc., or of any other employer, in the exercise of their right to engage in, or refrain from engaging in union or concerted activity, by blocking ingress or egress to jobsites, mass picketing, threatening to inflict bodily harm, attempting to or inflicting damage on property, or any like or related conduct.

WE WILL NOT picket at construction site gates reserved for use by neutral employers on jobsites where Joseph Stong, Inc. is engaged at work, or otherwise picket for an object of forcing or requiring Haverstick-Borthwick Company or any other person to cease dealing in the products of or cease doing business with Joseph Stong, Inc.

WE WILL NOT in any other manner or by any other means engage in or induce or encourage any individual employed by Haverstick-Borthwick Company, or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his or her employment to use, manufacture, process, transport, or to otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threaten, coerce, or restrain Haverstick-Borthwick Company, or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Haverstick-Borthwick Company, Swarthmore College, or any other person to cease dealing in the products of or to cease doing business with Joseph Stong, Inc.

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 19